Supreme Court, U.S.
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No. 86-37

IN THE
# SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RICHARD A. HECHENBERGER,

*Petitioner,*

*v.*

WESTERN ELECTRIC CO., INC., AND WESTERN ELECTRIC PLAN FOR EMPLOYEES' PENSIONS, DISABILITY BENEFITS AND DEATH BENEFITS, now also known in part as WESTERN ELECTRIC SICKNESS AND ACCIDENT DISABILITY BENEFIT PLAN, SOUTHWESTERN BELL TELEPHONE CO., INC.,

*Respondents.*

## OPPOSITION OF RESPONDENTS WESTERN ELECTRIC CO., INC. (NOW KNOWN AS AT&T TECHNOLOGIES, INC.) AND ITS SICKNESS AND ACCIDENT DISABILITY BENEFIT PLAN TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION RESTATED

Whether it is an abuse of discretion for a District Court to deny attorneys' fees and costs to a private plaintiff when the plaintiff was entirely or largely unsuccessful in the action and when the District Court further found that the plaintiff had imposed "substantial and unnecessary costs" on defendants and the courts by litigating frivolous claims after the entire case had clearly become moot?

## STATEMENT REQUIRED BY RULE 28.1

Respondent Western Electric Company, which changed its name to AT&T Technologies, Inc. on January 1, 1984, is a wholly-owned subsidiary of American Telephone and Telegraph Company ("AT&T"). AT&T has no parent company. In addition to its other wholly-owned subsidiaries, AT&T has ownership interests, either directly or through wholly-owned subsidiaries, in the Cuban American Telephone and Telegraph Company, Inc.; Ing. C. Olivetti and C., S.P.A.; Gold Star Fiber Optics Co., Ltd.; Western Electric Saudi Arabia, Ltd.; Gold Star Semiconductor, Ltd.; Communications Software Development, Inc.; AT&T and Philips Telecommunications, B.V.; and ShareTech, Inc.

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### REASONS FOR DENYING THE WRIT

Petitioner here seeks review of the Eighth Circuit's holding that a District Court did not "abuse its discretion" in denying him attorneys' fees and costs in a case that was dismissed on grounds of mootness after virtually all of petitioner's claims had been rejected. This holding is simply a correct application of well-settled principles to the unique facts of this case.

1. In this case, petitioner sought to maintain a class action under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C §§ 1001 *et seq.* Petitioner's complaint challenged respondents' former practice (as "permitted or required" by Missouri law) of "integrating" awards under state workers' compensation laws with benefits under employers' accident disability plans, and sought actual and punitive damages as

well as a wide array of "equitable" relief. (App. 2). However, the challenged practice had *not* been applied to petitioner at the time the suit was brought or at any time thereafter, and this practice was abandoned altogether after suit was filed. (App. 2). Nonetheless, petitioner thereupon continued litigating a raft of claims against respondents until the District Court dismissed the action as moot in August, 1983. (App. 6). Petitioner then appealed the District Court's mootness decision to the Eighth Circuit (App. 9) and unsuccessfully petitioned for certiorari from the Eighth Circuit's holding affirming the dismissal. 105 S. Ct. 1182 (1985).[1]

Petitioner then returned to the District Court, and unsuccessfully sought the attorneys' fees and costs that are at issue now. (App. 6). The Eighth Circuit affirmed that denial. (App. 2).

2. Under ERISA, the District Court has explicit statutory discretion to award or deny attorneys' fees. *See* 29 U.S.C. § 1132(g). Here, the District Court applied well-established standards in exercising that discretion, for it considered both the extent to which petitioner could be said to have prevailed in this action and whether an award would encourage or deter unnecessary litigation. *See generally Hensley* v. *Eckerhart*, 461 U.S. 424, 429, 434 (1983); *cf. Evans* v. *Jeff D.*, 54 U.S.L.W. 3810 (June 9, 1986).

First, contrary to petitioner's assertions (p. 4), the District Court largely rejected petitioner's contention that he was the "prevailing party." The District Court found that petitioner had "received, *at best*, only a small part of the relief sought". (App. 7) (emphasis added). Indeed, the Eighth Circuit emphasized that this case need never have been brought. *See* App. 4. In all events, the numerous remaining claims that petitioner litigated—including requests for class certification, for punitive damages, for a

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[1]To the extent that petitioner now seeks, again, to challenge the 1984 decision of the Eighth Circuit in this Court (*see* Petn. i, 6), he is belatedly challenging a correct, and routine, holding on mootness.

jury trial, for removal of the trustees of the plans, and for disqualification of opposing counsel—all were rejected and were baseless. (App. 7).

Second, the District Court held that even "[a]ssuming, arguendo, that [petitioner] could be said to have prevailed to some extent," a fee award would be inappropriate due to other "special circumstances." (App. 7). Specifically, the District Court found that petitioner himself generated "substantial and unnecessary costs" after his claim had become moot by litigating patently insubstantial claims (discussed above) and by further prosecuting what the Eighth Circuit held to be a "basically frivolous appeal." *Id.*; App. 4.

Because a fee award here would have rewarded frivolous and wholly unnecessary litigation, the denial of attorneys' fees was simply an appropriate exercise of the District Court's discretion. This is especially so because this same District Judge awarded petitioner's attorney some $60,000 in attorneys' fees in a subsequent suit that raised *identical* claims under ERISA, but involved a live controversy. *Wilkin* v. *AT&T Technologies, Inc.*, E.D. Mo. Case No. 83-2198(c)(3).

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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